

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

Criminal Revision No.97/2015

Revisionist : Mina Khatun

- Vs -

Opp. Parties : Sobahan Ali & 3 Others

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M.C. Nath Advocate for Revisionists
Sri J. Talukdar, Advocate for the O.Ps.

Date of Hearing : 04-03-2016

Date of Judgment/Order : 11-03-2016

J U D G M E N T / O R D E R

The propriety, legality, correctness and regularity are questioned in this revision preferred in respect of an order dated 25-08-2015 passed by Sri B. Khetri, Judicial Magistrate 1st Class, Dhubri in C.R. Case No.6460/2013 u/s.448/323/380/34 of IPC.

2. The revision was admitted for hearing. The LCR was called for and the Notice was issued to the respondents.

3. The revision has been preferred primarily on the grounds that the court after an inquiry took cognizance of offence u/s.448/323/380/34 of IPC u/s 202 of Cr.PC against present respondents on the complaint of the present revisionist. After appearance of accused persons, present respondents the present revisionist was examined as PW-1 on 28-10-2014 and she was partly cross-examined by the defence. The preset revision petitioner failed to appear before the learned lower Court along with her witnesses on 19-03-2015, 14-05-2015, 13-07-2015 and 12-08-2015 and all these dates the present revision petitioner's advocate sought adjournments. On 25-08-2015 also the present revision petitioner had taken adjournment due to flood. The Court observing that the present revision petitioner was not interested to proceed with the case and did not find the ground for adjournment satisfactory since accused persons who also lives in the village where the present revision petitioner lives had appeared before the Court and the accused persons had been discharged in the light of the provisions u/s.245 (2) of Cr.PC. Hence this revision against the said order.

4. Now 1st the court has to see whether the court is barred from exercising its power of revision u/s. 397 (2) of Cr.P.C. since 397 (2) put an embargo on the power of revision conferred under sub-Section 1 in relation to any interlocutory order. There have been catena of decisions of our Apex Court laying down necessary guidelines to find out whether a particular order is an interlocutory order or not. According to our Apex Court in K.K. Patel Vs. State, (2000) 6 SCC 195 para-11; Bhaskar Industries Ltd. v. Bhiwani Denim Apparels Ltd. (2001) 7 SCC 401 Para-8 the feasible test is whether by upholding the objection raised by a party, it would result in culminating the proceedings; if so, any order passed on such objections would not be merely interlocutory in nature as envisaged in Sec. 397 (2) of the Court.

5. Coming to the instant case the order had been passed u/s.245 (2) of Cr.PC by the learned Court below discharging accused persons in a warrant case instituted on complaint and as such it is clear that the order of learned lower Court resulted in culmination the further proceedings of the case and as such not interlocutory order and the court has power to exercise revision against the said order.

6. Now coming to the merit of the order of the learned lower court, the admitted position of the present revisionist is that since 28-10-2014 till 25-08-2015 she had been seeking adjournment without producing any witness for examination before charge, the case being warrant procedure.

7. Section 245(1) envisages that if upon taking all evidence referred to in section 244, the magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Thus so far the order of the Id lower court discharging the accused persons u/s 245(2) is concerned the provision envisages that nothing in this section shall be deemed to prevent a magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. Thus the court had passed the order within the limitations of the relevant provision of law concerned. Thus there is no illegality in the order of the court so far the law is concerned. Now coming to the reasons assigned for discharging accused persons are concerned the reasons are based on factual

aspect that is continuous adjournments sought for adducing evidence before charge. Now section 309(1) of Cr.P.C envisages "in every inquiry or trial the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded..... Section 309(2) envisages "if the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, post pone or adjourn the same on such terms as it considers reasonable, and may by a warrant remand the accused if in custody....."

8. Now considering the complainant had been examined on 28-10-2014 before charge and complainant having failed to produce any of the listed witnesses till 25-08-2015 and seeking adjournments during this period on one or other ground and court allowing such adjournments is indicative of the fact that the complainant was not interested to pursue the case and further adjournments would have proved prejudicial to the accused persons and same would have been against the spirit of the provision u/s.309 of Cr.PC. Thus I find no illegality having been committed by learned Court below in discharging accused persons in the light of provision u/s.245 (2) of Cr. PC. The order of learned lower Court is upheld and the revision is dismissed.

9. Sand end back the L.C.R. along with the copy of the order to the learned lower Court below.

Given under my hand and seal of this Court on this 11th day of March, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri